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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant(s): Müller et al.

Serial No.: 10/601,325

For: HOLDING CLIP FOR FIXING THE POSITION OF
GETTERS

Filed: June 20, 2003

Examiner: James R. Brittain

Art Unit: 3677

Confirmation No.: 6977

Customer No.: 27,623

Attorney Docket No.: 608.0023USU

**Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450**

APPEAL BRIEF FILED UNDER 35 U.S.C. §134

Dear Sir:

Further to the Notice of Appeal dated October 27, 2005 and in response to the Notice of Panel Decision from Pre-Appeal Brief Review dated November 23, 2005, the period of response having been extended two months up to and including February 27, 2006, the Appeal Brief filed herewith under 35 U.S.C. §134 and 37 C.F.R. §41.37 is believed to comply with the requirements set forth in 37 C.F.R. §41.37(c).

(1) Real Party in Interest

The real party in interest is Schott Glas. Ownership by Schott Glas is established by assignment document recorded for this application on November 17, 2003 on Reel 014724, Frame 0766.

(2) Related Appeals and Interferences

The undersigned attorney is not aware of any related patent applications or patents involved in any appeal or interference proceeding.

(3) Status of the Claims

Claims 1 through 7 and 9 through 13 are pending in the present application and are the subject of this Appeal. Claims 9 and 10 have been withdrawn from consideration but remain pending for rejoinder upon allowance of generic claim 1.

Claims 1 through 7, 11, and 13 stand finally rejected under 35 U.S.C. §103(a) over U.S. Patent No. 2,575,835 to Pohle (Pohle) in view of U.S. Patent No. 4,374,344 to Misono et al. (Misono). Claim 12 stands finally rejected under 35 U.S.C. §103(a) over Pohle in view of Misono in further view of U.S. Patent No. 5,717,290 to Schaffer (Schaffer).

(4) Status of Amendments

An Amendment after Final was filed on August 30, 2005. The Amendment after Final cancelled claims 16 through 19. The Advisory Action mailed September 15, 2005 entered the Amendment after Final.

(5) Summary of claimed subject matter

The claimed invention relates to a holding clip for fixing the position of a getter in a vacuum container.

It is known to fix, via welding, a wire bracket to the getter itself so that the position of the getter is fixed with respect to the wire bracket. It is also known to provide the inside of the container with a suitable fastener so that the position of the getter in the container can be fixed by fastening the wire bracket to the container's suitable fastener.

It has been determined by the present invention that the welded wire bracket leads to handling difficulties in that the getter has an increased likelihood of interlocking due to the wire brackets. It has also been determined by the present invention that the welding of the wire bracket on the getter and providing the container with a suitable fastener cause an increased production effort.

The claimed invention therefore provides a holding clip that simply and easily fixes the position of the getter with respect to the holding clip and fixes the getter in the container. The claimed holder is characterized by ease of mounting and handling, as well as minimizing the effort in construction and production for such a holding clip.

(6) Grounds of rejection to be reviewed on appeal

The issue presented for review is whether the final rejection of claims 1 through 7, 11, and 13 under 35 U.S.C. §103(a) over Pohle in view of Misono and of claim 12 in further view of Schaffer is proper.

(7) Arguments

(a) Claims 1 through 7 and 11 through 13 stand or fall together

Claims 2 through 7 and 11 through 13 depend from independent claim 1.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

(i.) Combination fails to suggest all elements of claim 1

Independent claim 1 requires that “said flexurally rigid connection and said first and second sections are elastically deformable to brace the getter in said first section and said second section in said inner surface”.

Thus, claim 1 recites three elastically deformable members, namely the flexurally rigid connection, the first section, and the second section. This simple combination of three members are elastically deformable to both brace the getter in the first section and to brace the second section in the inner surface.

The Office Action acknowledges that Pohle does not disclose a flexurally rigid connection. Rather, Pohle discloses a gettering loop 19 secured to the outer end of finger 26 in any suitable manner as for instance welding. Alternately, gettering loop 19 is secured to the skirt portion 25. See col. 2, lines 14-41.

However, the Office Action asserts that Misono discloses the claimed “flexurally rigid connection”. Specifically, the Office Action asserts that Misono, in Figure 3,

teaches a plurality of creased legs that inherently create a flexurally rigid connection.

In Misono, the conductive spacer 7 has one end secured to an electron gun structure 6 and the other end in contact with a conductive film 4. See col. 1, lines 40-43.

Appellants submit that both Pohle and Misono require securing to the gettering loop 19 (Pohle) or to the conductive spacer 7 (Misono). Thus, even if one were to consider the creased legs of Misono as creating a flexurally rigid connection, the resultant combination of Pohle and Misono merely provides one flexurally rigid connection. The remaining portion of this proposed combination would still be secured as is taught by both Pohle and Misono.

Thus, this proposed combination would still lack the simple combination of three members are elastically deformable to both brace the getter in the first section and to brace the second section in the inner surface as required by claim 1.

As such, the proposed combination of Pohle and Misono simply do not disclose or suggest the simple combination of three members that are elastically deformable for bracing as required by claim 1.

(ii.) No reasonable expectation of success that combination results in claim 1

Misono discloses that one end of the conductive spacer 7 is secured to an electron gun structure 6, while the other end is in contact with the conductive film 4. See col. 1, lines 40-43.

Again, if one were to consider the creased legs of Misono as creating a flexurally rigid connection, Misono merely uses this flexurally rigid connection to ensure that one end of the conductive spacer is in contact with the film. However, the other end of the conductive ring in Misono is secured to the gun structure.

Thus, even with the Office Action's position that Misono teaches a flexurally rigid connection, the resultant combination does not suggest that this same flexurally rigid connection would be sufficient to both brace a getter in the first section and brace a second section in the inner surface by the elastically deformable nature of a flexurally rigid connection, a first section, and a second section as claimed.

In fact, Pohle and Misono teach away from this construction by securing one of the ends and, not, bracing as claimed.

A reference that teaches away from the claimed invention is a significant factor to be considered in determining obviousness. See *In re Gurley*, 31 USPQ2d 1130 (Fed. Cir. 1994).

(iii.) No motivation to combine Pohle and Misono in the manner suggested

Again, the Office Action acknowledges that Pohle does not disclose a flexurally rigid connection, but asserts that Misono discloses the claimed flexurally rigid connection. As motive for the proposed combination, the Office Action asserts that::

"As it would be beneficial to better control the deformation of the holding clip of Pohle, it would have been obvious to modify the holding clip of Pohle so as to have a flexurally rigid connection as taught by Misono". See the Final Office Action at page 3, lines 2-10.

Further, the Office Action stated that:

"In considering the disclosure of a reference, it is proper to take into account not only the specific teachings of the reference but also the inferences which one skilled in the art would reasonably expect to draw therefrom." Id.

Thus, the Office Action asserts that the nature of the problem itself (i.e., the need to better control deformation as inferred by one skilled in the art) is the source of the motivation to combine the flexurally rigid connection of Misono with the legs of Pohle.

In *Ruiz v. A.B. Chance Co.*, 357 F.3d 1270, 69 USPQ2d 1686 (Fed. Cir. 2004), the patent claimed underpinning a slumping building foundation using a screw anchor attached to the foundation by a metal bracket. One prior art reference taught a screw anchor with a concrete bracket, and a second prior art reference disclosed a pier anchor with a metal bracket. The court found motivation to combine the references to arrive at the claimed invention in the "nature of the problem to be solved" because each reference was directed "to precisely the same problem of underpinning slumping foundations." *Id.* at 1276, 69 USPQ2d at 1690.

In the instant Application, the cited references are directed to different problems.

Pohle is directed to centering a cathode-ray tube in an electron gun by securing (e.g., welding) the gettering loop secured to the outer end of finger 26 or secured to the skirt portion 25. See col. 2, lines 14-41. Misono is directed to a color picture tube having a conductive film having a mixture of electrically conductive material and frit glass. Here, the conductive film makes electrical contact with a conductive spacer. See col. 5, lines 13-25. Thus, Pohle is directed to centering, while Misono is directed to ensuring that the film remains in contact with the spacer.

Since the nature of the problem to be solved by Pohle and Misono are different, there can simply be no motivation to combine the references to arrive at the claimed invention.

Further, the problems resolved by Pohle and Misono are both unrelated to controlling deformation as inferred by the Office Action. As such, inferring the nature of the problem of control deformation from Pohle and Misono is clearly flawed and, thus, there is simply no motivation to combine the prior art in the manner suggested by the Office Action.

(iv.) Schaffer is only asserted with respect to dependent claim 12

The Office Action merely asserts that Shaffer discloses a support wire with respect to the elements of dependent claim 12 and, thus, acknowledges that Shaffer does not disclose or suggest claim 1.

(v.) Conclusion

Accordingly, it is respectfully submitted that the proposed combination of Pohle and Misono in further view of Shaffer do not disclose or suggest independent claim 1. It is further submitted that the proposed combination of Pohle and Misono in further view of Shaffer do not disclose or suggest claims 2 through 7 or 11 through 13 for at least the reason that they depend from the aforementioned claim 1.

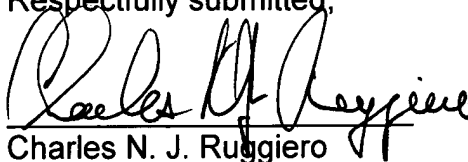
Appellants therefore respectfully request that the Board of Appeals reverse the final rejection of claims 1 through 7 and 11 through 13.

Summary

Appellants respectfully request that the Board of Appeals reverse the final rejections of claims 1 through 7 and 11 through 13, and rejoin withdrawn claims 9 and 10, thereby enabling all of the pending claims to be allowed.

February 8, 2006

Respectfully submitted,



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(8) Claims Appendix

Claims 1 through 7 and 9 through 13, herein on appeal, are set forth below.

1. A holding clip for fixing the position of a getter in an inner surface of a container, comprising:

a first section for supporting the getter;

a second section for supporting said first section in the inner surface of the container; and

a flexurally rigid connection connecting said first and second sections, wherein said flexurally rigid connection and said first and second sections are elastically deformable to brace the getter in said first section and said second section in said inner surface.

2. A holding clip as claimed in claim 1, wherein one of said first section, said second section, and said flexurally rigid connection have an elastic force set as a function of a property selected from the group consisting of a material property, a cross section, a shape of the holding clip, and any combinations thereof.

3. A holding clip as claimed in claim 1, wherein said first section comprises two first leg elements, said two first leg elements being mutually coupled via a connecting element, and wherein said second section comprises two second leg elements, each of said two first leg elements being connected to a respective one of said two second leg elements by a flexurally rigid corner.

4. A holding clip as claimed in claim 3, wherein said two first leg elements are spaced from one another by a first distance and said two second leg elements are spaced from one another by a second distance, said first distance being smaller than said second distance.

5. A holding clip as claimed in claim 3, wherein said two second leg elements extend in an inclined manner from said flexurally rigid connection.

6. A holding clip as claimed in claim 3, wherein said first and second sections are arranged in a plane.

7. A holding clip as claimed in claim 3, wherein said two second leg elements have an edge that has a feature selected from the group consisting of a rounded off feature, a beveled feature, and any combinations thereof.

9. A holding clip as claimed in claim 1, wherein said second section has an axial extension that defines an overall axial extension of the holding clip.

10. A holding clip as claimed in claim 1, wherein the holding clip has an overall axial extension equal to a total of a first axial extension of said first section and at least a second axial extension of said second section.

11. A holding clip as claimed in claim 3, wherein said first section is arranged at least partly between said two second leg elements.

12. A holding clip as claimed in claim 1, wherein the holding clip is formed from a wire.

13. A holding clip as claimed in claim 1, wherein the holding clip is formed from a spring steel sheet of low width and small cross section.

(9) Evidence Appendix

None.

(10) Related Proceedings Appendix

None.